

2/36 Exhibit "C-2"

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, made this \_\_\_\_\_ day of January, 1990, by KEN LOKEY HOMES, INC., a corporation organized and existing under the laws of the State of Texas, having an office at 1800 Bering Drive, Suite 220, Houston, Texas 77057 ("Assignor") to GENERAL ELECTRIC CAPITAL CORPORATION, a corporation organized and existing under the laws of the State of New York, having an office at Two Galleria Tower, Suite 1750, 13455 Noel Road, L.B. 24, Dallas, Texas 75240 ("GECC").

W I T N E S S E T H:

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby transfers, assigns and sets over to GECC, its successors and assigns, from and after the date hereof, all of Assignor's right, title and interest in and to (a) all leases, subleases, licenses, rental contracts and other agreements relating to the occupancy now existing or hereafter entered into and affecting that certain real property located in Stratford place, Lots 12 & 86 as more fully described in Exhibit A attached hereto and made a part hereof (the "Property"), together with all guarantees, modifications, extensions and renewals thereof which now exist or may hereafter be made (collectively, the "Leases"), and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including but not limited to, rentals under all present and future Leases, together with all deposits of tenants thereunder, including, without limitation, security deposits, now or hereafter held by Assignor in connection with the Property (the "Rents").

In connection with and as part of the foregoing assignment, Assignor hereby makes the following grants, covenants, agreements, representations and warranties:

1. Subject to the provisions of paragraph 3 below granting Assignor a revocable, limited license, GECC shall have the right, power and authority: (a) to notify any and all tenants and other obligators on Leases that the same have been assigned to GECC and that all Rents are to be made directly to GECC, whether or not GECC shall have foreclosed or commenced foreclosure proceedings against the Property and whether or not GECC has taken possession of the Property; (b) to settle, compromise or release, on terms acceptable to GECC, in whole or in part, any amounts owing on Leases and any Rents; (c) to enforce payment of Rents and to prosecute any action or proceeding, and to defend legal proceedings, with respect to any and all Rents and Leases and to extend the time of payment, make allowances, adjustments and discounts; (d) to enter upon, take possession of and operate the Property; (e) to lease all or any part of the Property; and/or (f) to enforce all other rights of the lessor under the Leases.

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Notwithstanding anything herein to the contrary, GECC shall not be obligated to perform or discharge, and GECC does not undertake to perform or discharge, any obligation, duty or liability (including, without limitation, liability under any covenant of quiet enjoyment contained in any Lease or under the law of any state in the event that any tenant shall be joined as a party defendant in any action to foreclose the Deed of Trust, as hereinafter defined, and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Property) with respect to the Leases or the Rents under or by reason of this Assignment. This Assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Property upon GECC, or to make GECC responsible or liable for any waste committed on the Property by any tenant or other person, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

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2. GECC shall have the right, power and authority to use and apply any Rents received hereunder (a) for the payment of any and all costs and expenses incurred in connection with the enforcing or defending the terms of this Assignment or the rights of GECC hereunder, and collecting any Rents; and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Property, (ii) interest, principal or other amounts with respect to any and all loans secured by deeds of trust, mortgages or other security agreements encumbering the Property (collectively, the "Deed of Trust"), (iii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property or any part thereof, (iv) insurance premiums, (b) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents, and (vi) wages and salaries of employees, commissions of agents and attorneys' fees and (vii) all other carrying costs, fees, charges and expenses whatsoever relating to the Property. After the payment of all such costs and expenses and after GECC shall have set up such reserves as it, in its sole discretion, shall deem necessary for the proper management of the Property, GECC shall apply all remaining Rents collected and received by it to the reduction of the indebtedness secured by the Deed of Trust. Exercise or nonexercise by GECC of the rights granted in this Assignment, or collection and application of Rents, by GECC or its agent shall not be a waiver of any default by Assignor under this Assignment, the Deed of Trust, any notes referred to therein or any other document or agreement relating thereto (the "Loan Documents"). Subject only to the provisions of Paragraph 6 hereof, no action or failure to act by GECC with respect to any of the obligations of Assignor under the Loan Documents, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to such obligations, shall in any manner



affect, impair or prejudice any of GECC's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and GECC to create, and shall be construed to create, an absolute assignment to GECC, subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Loan Documents, or any other indebtedness of Assignor.

3. Assignor shall have a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license may be revoked by GECC, without notice to Assignor, upon the occurrence of an Event of Default, as defined in the Deed of Trust, or upon default by Assignor of its agreement and obligations under this Assignment which shall constitute an "Event of Default" hereunder. Unless and until such license is so revoked, Assignor agrees to apply the proceeds of Rents to the payment of debt service on the Property and of taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property or any part thereof, insurance premiums, tenant finish and other obligations of Assignor or as lessor under the Leases, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection of such proceeds of Rents before using such proceeds for any other purpose. Assignor shall (a) observe and perform faithfully every obligation which Assignor is required to perform under the Leases; (b) enforce, or secure the performance of, at its sole cost and expense, every obligation to be performed by the tenant under the Leases; (c) promptly give notice to GECC of any notice of default received by Assignor from any tenant under the Leases, and any notice of default given by Assignor to any tenant under the Leases together with a copy of such notices; (d) not collect any Rents for more than thirty (30) days in advance of the time when the same shall become due, or anticipate any payments under any of the Leases, except for bona fide security deposits not in excess of an amount equal to two (2) month's rent; (e) not further assign any of the Leases or the Rents; (f) except with GECC's prior written consent, not waive, condone or in any manner discharge any tenants from their obligations under the Leases; (g) except with GECC's prior written consent, not cancel, abridge or accept surrender or termination of any of the Leases unless Assignor shall have entered into a Lease for the space to be vacated as a result thereof upon terms (including, without limitation, rentals and term) at least as favorable to Assignor, commencing within thirty (30) days after such cancellation, abridgment, surrender or termination; (h) except with GECC's prior written consent, not modify or amend, by sufferance or otherwise, any of the Leases or any of the terms, provisions or covenants thereof, other than in the ordinary course of business and in a manner which will not decrease the value of the Property; (i) provide in all future Leases that any cancellation, abridgment, surrender, modification or amendment of such Leases, without the prior written consent of GECC, except as permitted by the provisions of this Assignment or the Deed of Trust, shall be voidable

as against GECC, at its option; (j) comply with all laws, rules, orders, ordinances and requirements of all governmental authorities relating to the Property; (k) deliver copies of all Leases to GECC; and (l) appear in and defend against, at Assignor's sole cost and expense, any action or proceeding arising under, or in any manner connection with the Leases, the Rents or the obligations, duties or liabilities of the lessor, tenants or guarantors thereunder.

4. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Loan Documents shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment, and (b) all other obligations of Assignor under the Loan Documents have been satisfied. At such time this Assignment and the authority and powers herein granted by Assignor to GECC shall cease and terminate and Assignor shall assume payment of all unmatured or unpaid charges, expenses or obligations incurred or undertaken by GECC, if any, in connection with the management of the Property.

5. Assignor hereby represents and warrants the following to GECC:

(a) to the best of Assignor's knowledge and belief, the Leases which now affect the Property are valid, subsisting in and full force and effect, and have been duly executed and unconditionally delivered by Assignor and, have been duly executed and unconditionally delivered by the tenants under the Leases;

(b) Assignor has not executed or granted any modifications or amendments of the Leases either orally or in writing not previously exhibited to GECC;

(c) there are no material defaults now existing under any of the Leases and, to the best of Assignor's knowledge and belief, there are no defaults now existing under any of the Leases and no event has occurred which, with the delivery of notice or the passage of time or both, would constitute such a default or which would entitle the lessor under the Leases or the tenants thereunder to cancel the same or otherwise avoid their obligations thereunder;

(d) Assignor has not executed an assignment or pledge of any of the Leases or of its right, title and interest therein, except in connection with any subordinate financing approved in advance by GECC.

6. Assignor hereby irrevocably constitutes and appoints GECC its true and lawful attorney in fact, to undertake and execute any or all of the rights or powers described herein with the same force and effect as if undertaken or executed by Assignor, and Assignor hereby ratifies and confirms any and all things



done or omitted to be done by GECC, its agents, servants, employees or attorneys in, to or about the Property.

7. GECC shall not in any way be liable to Assignor for any act done or anything omitted to be done to the Property, the Leases or the Rents by or on behalf of GECC in good faith in connection with this Assignment except for the consequences of its own gross negligence or willful misconduct. GECC shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by GECC in the selection of such agents, servants, employees and attorneys. GECC shall be accountable to Assignor only for monies actually received by GECC pursuant to this Assignment.

8. Assignor shall indemnify and hold GECC harmless from and against any and all liability, loss, damage, cost or expense, including attorneys' fees, which it may incur under any of the Leases, or with respect to this Assignment or any action or failure to act of GECC hereunder, and from and against any and all claims and demands whatsoever which may be asserted against GECC by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions of any of the Leases or with respect to any Rents. In the event that GECC incurs any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by GECC until the same is paid by Assignor to GECC, at a rate equal to the lesser of (i) five percent (5%) per annum in excess of the regular rate of interest that would then have been applicable to the indebtedness under the note described in the Deed of Trust, or (ii) the maximum rate permitted by applicable law, shall be payable by Assignor to GECC immediately upon demand, or at the option of GECC, GECC may reimburse itself therefor out of any Rents collected by GECC.

9. Upon request of GECC, Assignor shall execute and deliver to GECC, such further instruments as GECC may deem necessary to effect this Assignment and the covenants of Assignor contained herein. Assignor shall cause such further instruments to be recorded in such manner and in such places as may be required by GECC.

10. All of the representations, warranties, covenants, agreements and provisions in this Assignment by or for the benefit of GECC shall bind and inure to the benefit of its successors and assigns.

11. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement or any waiver, change, modification or discharge is sought.

12. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be  
duly executed and delivered on the date first above written.

KEN LOKEY HOMES, INC.

By:

*Kenneth H. Perry*  
President

ATTEST:

*Kathy Heier*  
Asst Secretary

[Corporate Seal]

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(For Use in North Carolina)

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 1988, came before me \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that (s)he resides at \_\_\_\_\_, that (s)he is the \_\_\_\_\_ of KEN LOKEY HOMES, INC., the corporation described in and which executed the foregoing Assignment of Rents and Leases; that (s)he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed (his)(her) name thereto by like order.

NOTARY PUBLIC in and for  
The State of North Carolina

My Commission expires:

(For Use in Alabama)

STATE OF ~~ALABAMA~~ TEXAS

COUNTY OF HARRIS

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that KENNETH R. LOKEY, whose name as President of KEN LOKEY HOMES, INC., a Texas corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 24 day of

JANUARY, ~~1988~~  
1990

NOTARY PUBLIC

[NOTARIAL SEAL]

My Commi

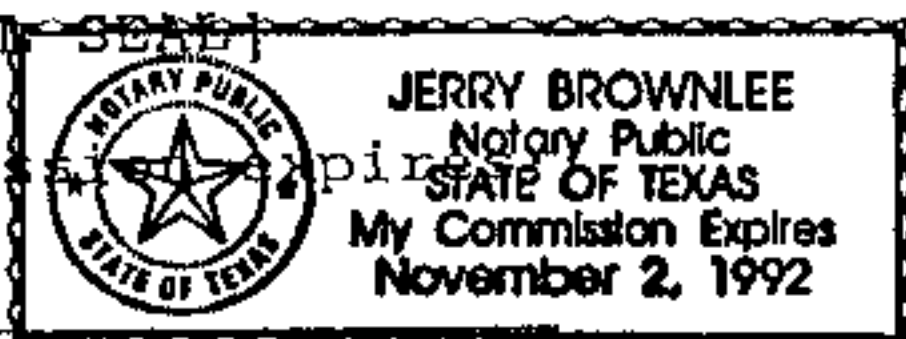


EXHIBIT A

DESCRIPTION OF PROPERTY

All that certain property located in SHELBY County, State of ALABAMA, described as follows:

Lots 12 according to the map and resurvey of Stratford Place, Phase III, Final Plat, as recorded in map Book 13 page 108, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

Lots 86 according to the map and resurvey of Stratford Place, Phase III, Final Plat, as recorded in map Book 13 page 108, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

90 JAN 31 AM 10:09

*Thomas H. Thompson*  
JUDGE OF PROBATE

|                  |    |       |
|------------------|----|-------|
| 1. Dead Tax      | \$ |       |
| 2. Mtg. Tax      | \$ |       |
| 3. Recording Fee | \$ | 20.00 |
| 4. Indexing Fee  | \$ | 3.00  |
| 5. No Tax Fee    | \$ |       |
| 6. Certified Fee | \$ | 1.00  |
| Total            | \$ | 24.00 |